

FEDERAL COMMUNICATIONS COMMISSION
445 TWELFTH STREET, SW
WASHINGTON, DC 20554

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MEDIA BUREAU
AUDIO DIVISION
TECHNICAL PROCESSING GROUP
APPLICATION STATUS: (202) 418-2730
HOME PAGE: www.fcc.gov/mb/audio/

ENGINEER: GARY A. LOEHRS
TELEPHONE: (202) 418-2700
FACSIMILE: (202) 418-1410/1411
MAIL STOP: 1800B3
INTERNET ADDRESS: Gary.Loehrs@fcc.gov

New Hampshire Public Radio, Incorporated
207 North Main Street
Concord, NH 03301

Wentworth Baptist Church
260 Cape Moonshine Road
Wentworth, NH 03282

Re: NEW(FM), Holderness, NH
Facility ID No. 174186
New Hampshire Public Radio, Inc. ("NHPR")
BNPED-20071019ALH
Petition for Reconsideration

NEW(FM), Plymouth, NH
Facility ID No. 175347
Wentworth Baptist Church ("Wentworth")
BNPED-20071017ADV
Petition to Return to a Processing Line as
Inadvertently Accepted for Filing

Dear Applicants:

This is in reference to: (1) the above-captioned application filed by NHPR dismissed by letter November 8, 2007, (2) the Petition for Reconsideration filed by NHPR on December 3, 2007, (3) the Petition to Return to a Processing Line as Inadvertently Accepted for Filing as filed by NHPR against Wentworth's application on December 3, 2007 and (4) all other related pleadings. NHPR requests reconsideration of the staff's November 8, 2007 dismissal of the above-captioned application. For the reasons stated below, we deny the Petition for Reconsideration, dismiss the Petition to Return to a Processing Line as Inadvertently Accepted for Filing, and grant BNPED-20071017ADV.

By letter dated November 8, 2007, the staff informed NHPR that the application, as originally filed, was in violation of 47 C.F.R. § 73.509 with respect to the co-channel Class A license (BLED-20061113ACV) for WLJH(FM), Glenn Falls, NY and the co-channel Class A previously filed application (BPED-20070907ABK) for WLJH(FM), Glenn Falls, NY. Specifically, the proposed protected and interfering contours (60, 40 dBu) would cause and receive prohibited overlap in relation to WLJH's licensed and proposed protected contours. Consequently, the application was dismissed pursuant to 47 C.F.R. § 73.3566.

On December 3, 2007, NHPR submitted a petition for reconsideration requesting reinstatement *nunc pro tunc* and an amendment. NHPR also filed a Petition to Return to a Processing Line as Inadvertently Accepted for Filing stating that its application and Wentworth's application are mutually exclusive. NHPR claims that the original application contained a typographical error and requests that the west longitude coordinates be corrected from $73^{\circ} 39' 00.1''$ to $71^{\circ} 39' 00.1''$. However, a change in coordinates to this degree for a noncommercial educational ("NCE") FM application results in a major amendment:¹ such an amendment can

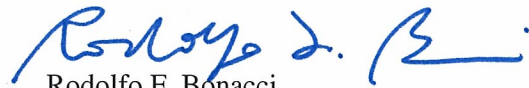
¹ Pursuant to 47 C.F.R. Section 73.7573(a)(1), a major amendment occurs when the amended 60 dBu contour fails to

only be filed during an application filing window required for NCE new and major change applications.² Consequently, the amendment and request for reinstatement cannot be accepted and processed under the terms of the Commission's August 2, 1984 *Public Notice*.³

In addition, the petition for reconsideration does not qualify for consideration under Section 1.106(c) of the Commission's rules. No good cause has been demonstrated that would warrant acceptance of an amendment. The petition for reconsideration has not shown that the staff's dismissal was in error, nor that facts and circumstances have occurred that could not have been discovered earlier using ordinary diligence. Indeed, the petition acknowledges that the error was solely the applicant's. It is the applicant's responsibility to ensure that *all* portions of its application are correct before filing the application. The staff cannot be responsible for correcting errors made, inadvertently or not, in applications.⁴ Furthermore, the corrective amendment was filed after the October 22, 2007 close of the noncommercial educational FM application filing window period and so must protect all applications properly filed during the window period.⁵ Making the coordinate correction sought for in the present application brings this proposal into direct conflict with window application BNPED-20071017ADV, Plymouth, NH.⁶ Any application, as amended, that proposes to create a new application conflict with another application filed in this NCE window will not be accepted.

In light of the above, the December 3, 2007 Petition for Reconsideration filed by New Hampshire Public Radio, Incorporated IS HEREBY DENIED, the Petition to Return to a Processing Line as Inadvertently Accepted for Filing IS HEREBY DISMISSED, and application BNPED-20071017ADV IS HEREBY GRANTED. This action is taken pursuant to 47 C.F.R. § 0.283. Please note, pursuant to the terms of the August 2, 1984 *Public Notice*, this constitutes NHPR's one opportunity to amend the application and request reinstatement *nunc pro tunc*. NHPR is not entitled to another attempt to amend the application.

Sincerely,



Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Garvey, Shubert & Barer
R.M. Smith Associates
David W. Robinson

overlap the originally filed 60 dBU contour.

² See *Letter from Peter H. Doyle, Chief, Audio Division, to Plus Charities*, DA 09-441 (rel. Feb. 25, 2009) (rejected the contention that the staff should treat its proposed amendment correcting a coordinate discrepancy as a "minor" amendment.)

³ *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, FCC 84-366, 56 RR 2d 776, 49 FR 47331 (1984).

⁴ See *letter from Peter H. Doyle, Chief, Audio Division, to Plus Charities*, DA 09-441 (rel. Feb. 25, 2009) (In the event of any discrepancies between data in the tech box and data submitted elsewhere in the application, the data in the tech box must be used.)

⁵ See *Window Opened to Expedite Grant of New NCE FM Station Construction Permits; Bureau Will Accept Settlements and Technical Amendments*, Public Notice, 22 FCC Rcd. 19438 (2007).

⁶ The application was accepted for filing on November 8, 2007.